Supreme Court, U.S.
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No. _____
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

EDITH HOROWITZ BROIDA, PETITIONER

V.

ESTATE OF MAURICE HOROWITZ, DECEASED, Through Its Personal Representative Samuel S. Smith, et al.,

Respondents

On Petition for Writ of Certiorari to the United States Eleventh Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a federal court can prejudicially deny access to federal diversity jurisdiction to a United States citizen by denying to her 14th and 5th Constitutional Amendment guarantees together with Article IV,Sec. 2, and Article III, Sec. 1 and 2 guarantees of the liberty and freedom to choose the location of a permanent residence and declare that residence which meets all legal requisites as her permanent domicile whenever she so chooses to designate it, and to proceed with her suit in federal court for her day in court against tortfeasing defendants and lawyer defendants who have caused without trial her property appropriated to them by conspiracy with state judges thereby denying her as well protection of her property becoming a violation of Due Process, with the preferential treatment of defendant lawyers continuing in federal courts, prohibiting her access to federal court to sue for return of her property leaving said property in the hands of malfeasors which is a governmental forfeiture of her property, and a deprivation of her civil rights.

2. Whether the district and appeal courts can deny plaintiff/appellant's constitutional right to bring her case to federal court where there is undeniable diversity jurisdiction and appellant's case first brought in state court was dismissed by a judge at a third hearing on defendants' motion to dismiss after appearance at the first two hearings by Plaintiff with her court reporters, and written notification to the judge and all defendants that she was hospitalized and could not attend, said judge having a relationship with one defendant lawyer of appointing him into cases; the dismissal a due process civil rights abuse.

3. Whether a panel of federal appeal judges can decide an appeal without having read appellant's briefs, such failure evident where issues raised in the briefs regarding procedural due process violations by the district court are not ruled on:
   a) that the district judge refused to hear the substantive jurisdictional facts of domicile even upon motion, ordering a magistrate to hear the issue, which magistrate was at the time applying for a federal judgeship; and said district judge refusing to review the facts de novo as required by federal rules after appellant's objection to the magistrate's Report, in violation of the federal civil rules of procedure;
   b) that the appeal panel issued their ruling upholding the district court without any citation of law where the evidence of domicile of appellant is clear, and where the cited case of district court in fact upholds appellant; and
   c) that the appeal panel refused to recognize diversity of citizenship between plaintiff/appellant who is residing in Washington, D. C. since 1963 permanently, domiciled there since 1987, whereas defendats are residents of Southern Florida, except Stephen Horowitz, domiciled in California, employed at the Howard Hughes Corp as a mathematician continuously since 1970.

4.. Whether a panel of federal appeal judges can fail to rule on appellant's motion to accept her Reply Brief until the final ruling which affirms the district court where such briefs have been incorrectly returned to appellant by the clerk and not available to the court until the Petition for Re--hearing when the briefs are returned with motion to accept;

and refuse oral argument to Appellant although they had only two months before held argument hearings in Miami, Florida where defendant attorneys live, such denial in the final ruling; and refuse to strike the brief filed by a defendant having no standing to file pleadings as a matter of state law in such a case; and that they did not rule on the same issue in district court where the magistrate permitted defendants who had no standing to file motions to dismiss and to argue their motions, and in fact enter a Report as based on a motion by a defendant with no standing to file pleadings.

5. Whether having undeniable diversity jurisdiction appellant can be denied her right to sue to recover money owed her by decedent's estate such right to suit in federal court provided by federal law, and such suit provided by state probate law, where all defendants and defendant lawyers, have conspired with state probate judges to ignore valid binding settlement agreements between heirs and deprive plaintiff/appellant, the eldest child of 2, and sole daughter, age 59 at death of decedent of her one-half inheritance by valid wills, by heirship agreement, by state law of intestacy , and by her professional work as attorney for decedent for 5 years before his death protecting his residence against eminent domain taking through litigation and winning, and continuing for the estate increasing the value of the property and settling for four times the offer, representing the estate in litigation against invalid wills removing five invalid claimants, representing the estate for five years as personal representative and in all actions and excessive work increasing

increasing the value of the estate, at great stress and detriment to her well-being and health, and loss of other gainful employment, and whereas the entry of the defendant attorneys into the probate case lost hundreds of thousands of dollars to the estate and the rightful heirs.

LIST OF PARTIES

EDITH HOROWITZ BROIDA, Petitioner/Appellant/ Plaintiff is the eldest of two adult children of decedent Maurice Horowitz and of his sole wife, married sixty years, and predeceased him by six months. Petitioner has sued his Estate on claims against decedent for monies owed her by him, owed his spouse, and owed her Estate of which Petitioner is personal representative and one-half heir, and which Estate loaned money to the defendant Estate which has not been repaid, without grounds for such denial of payment, and for services rendered to the Estate by her and for investment and payments made by her personally for the benefit of the Estate which repayment by the Estate has been refused to her.

DEFENDANT:
ESTATE OF MAURICE HOROWITZ IS THE DEFENDANT. By Florida law a decedent's Estate must sue and be sued through its personal representative. Samuel S. Smith is the court-appointed personal representative (executor) unknown to the decedents and to the family members and invalidly appointed by the judge.

Parties Joined in the Suit
All those heirs receiving distribution,(and said distribution is invalid),and all attorneys receiving fees,(all of which are invalidly paid since they rendered no service for which fees can be paid in Florida probates by law) are joined for the court to have jurisdiction over them and the Estate assets of money which is in their possession.

Samuel S. Smith, attorney-at-law, joined as personal representative and attorney representing himself as personal representative who received more than $100,000 in fees.

Milton Kelner, attorney-at-law, appointed as guardian-ad-litem for minor Thomas Blaine Merrett, and never contributed any benefit

LIST OF PARTIES (cont'd)

to the minor or the Estate, received fees of $10,000. (not served with complaint)

Gene S. Rosen, attorney-at-law, retained by Stacie Broida Merrett for herself and Thomas Blaine Merrett to obtain her settlement but instead conspired to cause litigation and other heirs to breach their binding settlement agreement, contributing no increase of value to the estate but a decrease,resulting in civil rights deprivation of property and contractual rights to Petitioner Broida. Awarded fees of $25,000 by the probate judge and obtained more fees from client Merrett. It is unknown whether he was paid by the heirs whom he did not represent but directed to breach their contract.

Bernard B. Weksler, attorney-at-law, who entered the probate about 1984 directing Alvin Edward Horowitz and his four issue to breach their valid binding settlement agreement of 1978 to deliberately cheat Petitioner Broida whom he believed caused her parents to fire him after he assisted a debtor of theirs to defraud them. He is joined as reprsenting these heirs who received invalid distribution, as notice to them. (served for his clients.)

Alvin Edward Horowitz, 2-year younger brother of Petitioner, who joined with her in litigating against the invalid wills, in continuing the eminent domain suit for the Estate and invested his money from the Estate of the mother for these purposes and acted as co-personal representative of both Estates with Petitioner doing the actual work. Breached his contract with Petitioner 1984 together with his issue.

LIST OF PARTIES (cont'd)

hiring Bernard Weksler to represent them. About a month later Alvin sold one of his many real properties for $431,000 for himself alone, more than was in this, his Father's Estate. His investment had been $60,000 for that property. Took distribution.

Stephen R. Horowitz, eldest issue of Alvin, legal resident of California more than 20 years, 52 years old, assigned his interest to sister Paula but took distribution, fraudulently through Weksler and Smith. Employed as mathematician for 20 years by Howard Hughes Corp., married 20 years, no children. Distribution over $42,000.

Paula Horowitz Roth, second issue of Alvin, married more than 20 years, no children, 49 years old. Operates a bookkeeping company; husband an electronics expert, own home 20 years; distribution over $42,000.

Karen Horowitz Barnett Kaplan, third issue of Alvin, 48 years of age, married a second time, no children. Retained Melvin Trute conspiring with Gene Rosen to breach her contract, when married to first husband Barnett. Received distribution over $42,000 and purchased home for herself and second husband.

Betsy Horowitz Nieves Horowitz, 36 years old recently divorced, no children, last issue of Alvin. Received distribution of over $42,000, divorced her husband and bought a house for herself. Has been employed at various jobs after college.

Stacie Broida Merrett, only child of Petitioner Broida, 52 years old , mother of Thomas Blaine Merrett, divorced from his father since child was 4 years old, Represented by Gene S. Rosen who then solicited all the named family members to represent them to breach their contracts with Petitioner. Received distribution of more than $42,000 but had to pay Rosen more that he asked for. Her husband is low-economic.

Thomas Blaine Merrett, son of Stacie, only grandchild of Petitioner Broida, was a minor in 1978, now 24 years old. Awarded distribution of over $42,000. A capable youth with strong academic ability, deprived by his mother of association with his grandmother,Petitioner, who wanted to send him to private live-in school and summer camp because of his outstanding athletic ability. Rosen took more moeny from him without any review by the court or by Smith who owed his $100,000 to Rosen.

Saul Broida, named by the probate Judge as trustee for the minor child as was requested by Stacie who was solely reared and supported by her mother, Petitioner. Purportedly he has charge of the minor's share until he reaches age 25. No provision was made by personal representative Smith for reporting to the court on the management of the funds or anything else. Petitioner divorced Saul in 1949 and he took no responsiity for his daughter Stacie . He is added because those assets are in his possession.

LIST OF PARTIES

The parties are all listed in the style of the case.

Other interested parties might be the appeal panel of the Eleventh Circuit Court, Anderson, Edmondson, and Carnes.

District Judge Milton Atkins, Southern District
Magistrate Ted Bandstra, Southern District

Petitioner Edith Horowitz Broida is referred to throughout either as Appellant, Plaintiff or Petitioner, or those combined.

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IN THE SUPREME COURT OF THE UNITED STATES

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EDITH HOROWITZ BROIDA

Petitioner

v.

ESTATE OF MAURICE HOROWITZ, DECEASED, THROUGH Its Personal Representative Samuel S. Smith, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES ELEVENTH CIRCUIT COURT OF APPEALS

EDITH HOROWITZ BROIDA, APPELLANT below, respectfully petitions for a writ of certiorari to review the ruling of the Eleventh Circuit Court of appeals which confirms the dismissal of her action for claims against the Maurice Horowitz estate which denied her diversity jurisdiction for suit in federal district court.

OPINIONS BELOW

Petitioner Broida has not found the district court decision in the Reporter, and it is too soon for the Eleventh Court decision to be reported. Petition for Rehearing was denied in this case, #93-5023 on August 10, 1995. The suit in district court was 92- 00997 Civ-ATkins.

JURISDICTION

The Eleventh Circuit Court of Appeals having entered its decision August 10, 1995 denying Appellant Broida's petition for rehearing confirmation of dismissal by the Miami, Fla. district court the jurisdiction of this Court invoked under 28 U.S.C. 1254 (a),and perhaps (c)

CONSTITUTIONAL PROVISIONS INVOLVED

The 14th Amendment to the U.S. Constitution provides that:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside", and, " No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States"," Nor shall any State deprive any person of life, liberty or property without due process of law", " nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifth Amendment to the Constitution provides " no persons shall be deprived of life, liberty or property without due process of law,", and

Article IV, Section 2 of the U. S. Constitution " The citizens of each State shall be entitled to all Privileges and Immunities of citizens in the several states",and

Article III, Section 1, " the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish; and Section 2, The judicial power shall extend to all cases in law and equity, arising under this Constitution, the Laws of the United States, ...to controversies affecting Citizens of different states"

" A State cannot tie up a citizen of another state having property within its territory, invaded by unauthorized acts of its own officers, to suits for redress in its own courts." (1908 U. S. Supreme Court, cited in The Constitution of the United States, by Thomas James Norton, 1943, Prentis v. Atlantic, etc., 211 US 210,1908.

STATEMENT OF THE CASE

In this case this court is confronted with an issue that affects the constitutional right of every citizen and even non-citizen of this Nation which is the inalienable right to move freely throughout this country from State to State to establish a desired residence for whatever reason that person holds without the interference and supervision of government, or the courts or those wishing to stop litigation that may involve them as opposing parties.

If there is anything that is sacred to this Nation it is the freedom of movement of a free people. Unlike countries of other continents, as for example, Europe, and the Middle East, once a person is admitted to this country, or born in this country (and surely those native-born) they may choose any location within the Nation without displaying a passport for entry and without any question being asked as to their reason. And whereas in times gone by, people basically spent their entire lives in one community, after World War II, and particularly since the 60's as small farms have decreased and government and industry have proliferated, this Nations's people have been on the move and have even established residences in more than one location.

Appellant/Plaintiff established a permanent residence in Washington, D. C. in January 1963, and, in fact, had no other physical residence

anywhere else. She maintained a fictional domicile in the home of her parents in the city of Miami Beach, Fla. to which city her parents had moved the family in 1934 when she was 16. Although she had lived away from her parents many times,she maintained their address as her domicile. In fact, at ages 17 and 18 she was in college in another city. After her marriage, she continued to live with her parents, although leaving to follow her husband to training camps in several different states during World War II. After her divorce she lived with her daughter in apartments from time to time, and took her daughter to live in New York City to remain permanently, but had to return, and to Los Angeles, California in 1951, to live permanently, but had to return. She rented apartments from time to time in Dade County but in 1962 her daughter married, and in 1963 Appellant/Plaintiff moved all her belongings to the District of Columbia moving permanently from Miami Beach,

Appellant Broida's parents were in business and living in that same city since 1934 although the father had come to this country in 1914, and the mother had been born in New York City where both lived and moved to the Bronx, N. Y. then to Brooklyn, N. Y., then to Newark, N. J. and finally remained in Miami Beach till their demises, she in 1977, and he in 1978.

Appellant was a devoted daughter for a lifetime, working in the family business since age 16 as bookkeeper, and continuing whenever needed. She managed the business in summers when her parents took vacations and at other times being able to do all that was necessary. She lived in the residence of the parents and managed that as well helping with contracting repairs, etc. In 1954 Appellant, divorcing her husband, her child then 6 she entered law school at night, at her own expense, and graduated cum laude in 1954, having had to work in the day to support herself and child.

As long as her parents would be alive appellant would be on call to answer to their needs. Every member of the family knows that, as well as many other friends and acquaintance. Therefore, Appellant maintained her legal domicile at the home of her parents in Miami Beach while living an working in Washington, D. C. In Washington she had the only real home of her own she had ever had, with her own furniture and furnishings. She maintained domicile in Miami Beach merely by continuing to vote there, by absentee ballot. She no longer lived there.

Appellant had a law office after graduating from law school in 1954, at a few different locations until January 1963 when she closed it and turned existing clients over to other lawyers. However, so that former clients could find her she kept a listing in the phone book at an office of a lawyer friend.

However, she was able to return and represent her parents and other family members on occasion. She represented Alvin,Paula,and Stacie

She had to do this several times, and in fact in April 1967 the parental business had difficulties, and Appellant had to leave the home in Washington and return to Miami to take over management of the business which faced bankruptcy. Her father was developing senile behavior. Appellant, coming with one suitcase, had to remain until January, 1969 when she put her parents into retirment, closing the business. They were then in their 70's. She had to give up her own career which had been in government directing programs for improvement of education. Appellant is an educator, sociologist, and manager.

Returning to Washington she nevertheless had to return to Miami Beach for her father's illness in 1971 for a month, and in 1973 when the City of Miami Beach began condemnation proceedings against the property of the parents in eminent domain proceedings. She had to go there, but <u>never moved back.</u>

And she had to keep returning in 1974,(Ap) 1975 , 1976, 1977 as the eminent domain case proceeded and she represented her parents to keep from having to move out of the property and to obtain adequate value. The taking was not a necessity, in fact, and she was able to obtain a dismissal in Dade County circuit court after a trial on the issue of necessity.

Appellant will explain the facts leading to the instant suit later.

THE CASE IN DISTRICT COURT

This suit in federal district court arises from a probate of the estate of Maurice Horowitz in Dade County Circuit Court.The probate of the estate had been concluded and all the money distributed to the named defendants and as fees to three of the attorneys named. Appellant received nothing from the estate although she was the only person responsible for creating a value for the estate of $400,000 and acting as its personal representative by valid wills and heirship sgreements with all interested family members and removing by litigation five claimants, not family members, under an invalid will.

The distribution of the estate was accomplished by fraudulent conspiracy of the probate judge and the defendant attorneys herein who entered the case six years after appellant had performed all the work of protecting and increasing the value of the estate, and the litigation necessary to defeat an invalid will.

The probate judge and all defendants conspired to refuse to hold a trial on the binding heirship agreement which gave the estate as it would descend by law to the only two issue of decedent- appellant daughter, the eldest, and the son Alvin Horowitz, and who were named in several valid wills and as personal representatives. The invalid wills were prepared by a marauding attorney, now

deceased, who, appellant discovered, had been frequently engaged in spurious benavior in his active probate practice..After two years of litigation he was removed by appellant and her brother, paying him a settlement from their own funds. He had a strong recognition in state probate court which made judges try to help him.

After the estate was distributed with appellant being fraudulently separated from her rightful half interest and fees for her professional work appellant filed suit in state circuit court for claims against the estate for money owed her by decedent and for money owed her by the estate. These sums were well over $200,000.

These claims had been filed immediately as the probate began but were held in abeyance pending the completion of the litigation and the disposition of the estate.

After filing the suit in state court general jurisdiction appellant found the same conditions existing with that circuit court judge who knew the lawyer defendants before him and had appointed some into cases which caused him to act prejudicially.

He dismissed the case at a third hearing called by defendants after appellant/plaintiff had appeared with court reporters at the first two hearings, and after notice had been received by that judge and all defendants that plaintiff was ill and could not attend the third hearing, asking that it be reset.

That judge knew Plaintiff had an intense interest in the case and that its value was over $200,000. In fact, Plaintiff had undergone surgery for cancer, remaining in the hospital for nine days, and confined to bed, for six weeks thereafter at which time the hearing was deliberately set and case dismissed.

This was a civil rights violation and deprivation of due process in state court because of the influence of defendant lawyers.

In 1987 Plaintiff had changed her 'domicile' to Washington, D. C. Having already a permanent residence there continuously, every day, and which cost her considerable money to maintain, she removed the last vestige of legal domicile in Dade County, Florida by ceasing her voting registration, and declaring in a lawsuit then in federal court which pleadings went to each of the defendants that she declares her domicile to be changed to existing residence in Washington, D. C..

Since plaintiff already had the right to federal diversity jurisdiction she filed this suit in federal district court hoping the same preferential attitudes of judges would not be present. She was mistaken.

Title 28, Sec. 1332 permits such suit in federal court where plaintiff's legal domicile is in a different state than all the defendants. The suit is filed five years after she has made a declaration of domicile.

By Florida law suits against a decedent's estate are brought against the personal representative (executor) and are defended only by the estate, as well as suits brought on behalf of the estate. Fla. Probate Stat. 733.612(20).

Florida Probate law provides that a creditor of an estate shall present the claims to the personal representative and if denied, then at a hearing to the probate judge, and if denied, the creditor has the right to sue the estate in a court of general jurisdiction.

The 3rd District Court of Appeals Miami, Florida upheld the right of a creditor whose claims against an estate were rejected by the probate judge to sue in general jurisdiction despite failing to have given notice to the estate, declaring the statute for notice un-

constitutional. First Florida Leasing Inc., v. James Michael Watson as personal representative of the Estate of Michael Corso, 12 FLW 1265, 1987, 3DCA.

All the interested parties are joined as defendants because the assets of the estate are in their hands and that of the attorneys who received unconscionably high fees although none contributed to the benefit of the estate and did not become involved, except through the conspiracy of a state court probate judge in 1983, five years after appellant had worked as attorney and personal representative increasing the estate from an offer on the residence in eminent domain in 1973 of $100,000 to $400,000 and litigating against invalid wills, removing five claimants under those wills, and otherwise protecting estate assets as personal representative.

The attorneys caused a loss to the estate of at least $200,000 which appellant's appraisers had valued the residence as commercial property at between $648,000 and $1,000,000. Their interference when appellant had been litigating in that action since 1973, five years before decedent's death, and no one else was involved, caused appellant and her brother to settle with the condemnor and not proceed to another trial after the first trial in 1981 gave an inadequate verdict of $300,000 which appellant reversed by taking and arguing an appeal herself.

By Florida law the defendants are properly joined in this suit although they cannot defend

> "The title and interest of the heir is subject to the debts of the ancestor and the transferees of the heirs take only such title or interest as the heir had." 17 Fla. Jur. 460

The federal courts accept jurisdiction of suits against a decedent's estate.

> " A proceeding to establish or prove

> a creditor's claim against a decedent's estate is essentially an inependent suit inter parties and not a matter of pure probate jurisdiction, and the claims having been filed in the proper state court does not defeat the jurisdiction of the proper federal court to entertain the action." Farmer's Bank v. Wright, 158 F. 841.

After this case and the companion case against the family defendants for fraud were filed in federal district court, the district judge over objection of plaintiff ordered the case to be heard by magistrates. In this case Magistrate Bandstra held two hearings responding to the motions to dismiss filed by two defendants' attorneys, personal representative Smith, and Melvin Trute.challenging Plaintiff Broida's domicile as Washington, D. C. Attorney Martone was late in filing his motion to dismiss since his client had resisted service, as did all the family defendants, except Paula whose residence was found and personal service made on a second try after first resisting.

The rules of civil procedure do not provide for a defendant to enter a case whenever he so wishes. There is a 20 day limit to answer after which a default is entered on motion of plaintiff. The magistrate and judge refused to follow this rule as to Attorney Martone representing Betsy Nieves.

The evidence submitted by plaintiff unquestionably established that she had a permanent residence continuously in Washington, D. C. since 1963 and only had to establish a secondary residence in Dade County, Florida when her parents died and she acted as personal representative of both estates and continued for the estate to litigate the eminent domain case against the only asset of that estate, the residence of the decedents which was an estate by the entireties.

The magistrate was influenced by the five lawyers appearing opposing her, the fees of three named lawyers were in jeopardy, and unknown to plaintiff at the time of the hearings, the magistrate was applying to a panel of lawyers to be appointed as federal judge. The law firm of Samuel S. Smith has Mr. Smith's brother as a member of the panel recommending federal judges for Congressman Connie Mack.

Defendants entered no evidence proving Plaintiff did not have permanent residence in Washington,, D. C. but only raised questions most of which had no validity whatsoever as, for example, the attorney representing Smith presented to the court that probably residents of the District of Columbia could not appear in federal courts because said district was not a state. That young man had no sense of civil rights of U. S. citizens to suggest that some citizens would be deprived of litigation rights In fact, Title 28 makes specific provision for all citizens of the District and the Commonwealths of this Nation. The Magistrate however, was engaged by the idea and fully willing to accept it.

No affidavits or evidence or testimony was introduced by the family defendants(although the three daughters of Alvin attended both hearings) denying Plaintiff's residence in Washington, D. C.. Any such affidavits or testimony would have been perjury since they well know that Plaintiff moved to Washington, and Paula, Stephen, and Betsy visited her in her home there, with Betsy at the age of 14 spending a week with her at Thanksgiving one year. Attorney Bernard Weksler did not attend these hearings or make any statements since he has been a friend of Alvin and his family since the 50's and visited with Plaintiff after she moved to Washington when he came up for business, Plaintiff, having become an attorney in Miami, Fla. in 1954 was well known to many attorneys who knew she had moved and contacted her when they came to Washington, and other relatives,

as did other friends and acquaintances of her from the many years she had lived in Florida. Most of them had been upset that she was moving away and tried to discourage her before she moved.

Plaintiff never knew Gene Rosen who at the time she moved might have been about 16 years old, or Melvin Trute, and barely knew who Samuel S. Smith was until she spoke to him in 1977 asking him to represent her and her brother in litigating against the invalid will. None of these ever had a relationship with any member of the family, including Milton Kelner, and their first appearance was in 1983, with Smith being invalidly appointed as personal representative, the probate judge fraudulently removing plaintiff and Alvin as personal representatives who were so named in valid wills, so named by statute, and by heirship agreements, and so acting for the previous five years.

Rosen and Trute were also encouraged by that probate judge to enter the probate proceedings when they were invalidly involved.

Andre Fournier appeared for Trute in the federal court case. Martone was never involved in this estate and first appeared in this federal court case, and all his efforts make it evident he has no idea what it is about, and that includes his Answer brief. He has no knowledge or experience with probate matters which is a specialized area of law.

Over the objection of Plaintiff the Magistrate allowed Rosen, Martone, Trute to argue their motions although they had no standing by law to file motions to dismiss or to argue. In his report the Magistrate misstates and misconstrues the evidence and relied on a case which in effect actually supports Plaintiff, Hawes, v. Club Ecuestre Commandante, 598 F2d 698, 1st Cir. 1979 in which under similar circumstances the appeal court reversed the dis-

trict court which had denied diversity jurisdiction.

The district judge, Atkins, was totally confused about both cases, and showed that confusion, by setting the companion case, against the family defendants, 93-5022 for trial twice, an answer having been filed for one of the defendants and the others having resisted service, and in which the same issue of diversity had to exist.

The district judge, a senior judge, refused also to abide by the rule of civil procedure requiring the judge to review the issue de novo after plaintiff filed objections to the magistrates report which dismissed the case for lack of diversity jurisdiction.. That judge who had been assigned many local important cases also denied plaintiff Broida's motion for him to step down since he was so busy with these other cases. He accepted the magistrates report dismissing the instant case while at the same time setting the other case for trial, although the issue of diversity jurisdiction applied to the other case as well but had not been raised by the attorney, Weksler,who filed an answer. See Rule 72 (b) Rules of federal Civil Proced- for review of magistrate's Report and evidence de novo. (Ap 3,4)

After being advised that the companion case was not ready for trial, the district judge dismissed it as well. Both cases had been filed at the same time in district court, and appellant filed both at the same time in the 11th Circuit Court of Appeals. Appellant returned to her domicile in Washington, D. C. November, 1993 after filing the two appeals.

THE APPEAL IN THE 11TH CIRCUIT COURT

The appeal panel could not have read the briefs of appellant. They never addressed the issues raised of the refusal of the district judge to hear the issue himself initially, or to review the issue of diversity de novo, or the refusal of the magistrate to strike the

motions to dismiss filed by attorneys Rosen, Martone, and Trute who had no standing to defend, or the failure of defendants to submit any evidence proving plaintiff did not have a permanent residence in Washington, D. C. other than that they saw her living in Miami and appearing in these cases.

The appeal panel refused to grant oral argument to appellant. They did not have the Reply Brief of Appellant because attorney Martone had filed an Answer brief although he had no standing in the appeal as he sis not in the court below. Appellant filed a motion to strike, and also stated that it had no application to this case since he filed the same brief in the companion case and the issues were different. The clerk returned the brief and the brief responding to Smith's as well, stating two briefs could not be filed. Appellant moved that both briefs could be included in one cover since she hoped Martone's brief would be stricken for the reasons stated. No ruling was ever entered by the court until its final ruling in which at the same time it denied the motion to strike, denied oral argument, and upheld the lower court.

In fact, a couple of months before that ruling the court held oral argument in Miami, Fla. where all the attorneys live and could have notified appellant to appear there.

Appellant then moved for the court to accept the brief responding to Smith for the Petition for Rehearing.

On August 10th the panel denied the Petition for Rehearing and the motion for oral argument.

No citation of law was given for either decision of the court.

In the companion case, the clerk lost the Petitions for Rehearing, and appellant re-filed them, and the clerk then stated they had found them and presented them to the court, but

but the court has not ruled on those Petitions despite motions filed by Appellant asking for them to rule so that that case can be presented to this court with the instant case.

The appeal court has denied Appellant her constitutional right to file her suit in federal court and has continued the civil rights abuse of the court below in continued prejudice in favor of the lawyer defendants. In fact, charges of improper actions have been brought against many of the lawyers in the Florida law firm in which Samuel S. Smith is partner. One lawyer, who had been representing Smith in the probate appeals was charged with misrepresentation in a different case before the Florida Third District Court of Appeals. Two other lawyers of that firm were charged with misrepresentation in a case in federal court by a federal magistrate.(Ap 1,2,

THE BASIS FOR U. S. SUPREME COURT JURISDICTION

There can be no greater and more important constitutional right in this Nation to all its citizens and residents than in this democracy the right to move freely about the country, to choose whatever location for a residence one so desires and for whatever reason one desires, and to have even more than one residence, and to designate which such residence is the major residence which the person designates as his legal residence or 'domicile'. This right is guaranteed by the 14th amendment and 5th amendments to the U. S. Constitution. In addition there is the guaranteed right by Article IV, Sec.2, and Article III, Sec. 1 and 2 guaranteecitizens the rights to sue in federal court citizens of another state, as set forth in Title 28, and Sec. 1332.

This is a very recognizable right to those thousands of persons who come to Washington, D. C. to work in Congress, the Senate, the White House, other governmental agencies and whose employment may be of duration of many years but is still temporary, and they maintheir legal domicile in their previous resi-

dence. It is important to thousands of others in this Nation whose work takes them to other locations where they must work for years, while their families remain in a previous residence which they designate as their legal domicile.

The issues in this case of deprivation to this Petitioner of those rights, and the right to have access to federal court, where there is such diversity, and the further failure of the district court judges to follow federal rules of procedure they are required to follw, and the refusal of federal courts to apply state law when a case based on state probate procedure is brought to federal court and they are required to follow state procedure and law; and the inability for Petitioner to obtain due process including the civil rights violation of the previous state court judge where the suit was filed causing Petitioner to seek access to federal court, are all issues affecting the rights of all citizens of this Nation and require the review of this United State Supreme Court.

In Morris v. Gilmer, 129 US 315, 328 SCT 289, 32 LED 690, 1889, an early Supreme Court case with which the federal judges below are in conflict established the right of all citizens to change domcicile whenever they so wish with no period of residence necessary.

"There is no period of residency required. A citizen of the United States can instantly transfer his citizenship from one state to another."

If this were not true then such persons as former President George Bush could not have 3 residences, one in New England, one in Greater Washington, and one in Texas where he owned no residence and did not

live, having lived for years working for the U. S. government's CIA not in Texas but in Washington, D. C., and declared Texas to be his domicile from which he ran for office to become President of the United States. If this was not legal it would have been questioned. This is a usual situation with many political candidates who change their residence declaring new domicile in another state. This was done also by Robert F. Kennedy who left his home in Boston, Mass., working in Washington, D. C. living in Virginia, and then moving to New York City to run for office from New York as Senator. These are only two publicly known examples.

Is the purpose of the Constition to protect only those who become public figures? Attorney Samuel S. Smith, a member of the American Bar Association and on its Board of Governors, say so and asked Petitioner Broida at his deposition of her " Do you compare yourself with Them?" Does the Constitution not protect the rights of Petitioner Edith Broida as it protects people in public life?

Petitioner brings this case before this Court because the decisions of the federal courts below are in conflict with Morris v. Gilmer and other such Supreme Court decisions, and in conflict with the decision of another federal circuit court, Hawes v. Club Ecuestre Commandante, 598 F2d 698, 1st Cir., 1979 in which the appeal court reversed a decision of the district court which denied domicile and access to federal court diversity jurisdiction. and other federal circuit court of appeal decisions; and because the appeal court has departed from the accepted and usual course of judicial proceedings in its actions in the appeal, and sanctioned similar departures by the district court requiring exercise of this court's supervisory power; and the eleventh circuit court of appeals and the district court has decided the important question of the rights of citizens to change their domicile at will and claim diversity for suits in federal court, denying that right.

The appeal court and the district court have deprived Petitioner of her constitutional rights in order to favor attorneys whom they wish to assist.

The decisions of both courts act as a forfeiture of the property rights of Petitioner whom they are prohibiting from protecting her property rights in federal court which right is guaranteed by the constitutional provisions already cited herein by Petitioner.

In Hawes in upholding the right of Appellant to hold where was the domicile for the purpose of a federal suit the court stated

> "This is not a situation where the change in residence is made solely for the purpose of invoking federal jurisdiction, but as we have already pointed out such a motive does not defeat a bona fide change in domicile" p 702.

As applied to Petitioner herein, she established a permanent residence in Washington, D.C. in January 1963, and never moved her belongings to any other location, although she herself had to return to her parent's city to protect her property rights in her inheritance from them, and to work in their estates as personal representative, and attorney for the estates, and litigate against invalid wills, against condemnors seeking to avoid value payment for property in the estate. Petitioner had to set up a secondary temporary residence to which she did not move any of the property she had in her Washington residence, except to have to return to Washington once a year during the litigation in Miami courts, to obtain various papers in her Washington home to present them in court proceedings, such as her telephone bills showing her calls to her parents and other members of the family from her home in Washington.

Petitioner declared her Washington home as her domicile in 1987 and had already removed herself from the voting registry of Dade County, Florida, having last voted in 1986. She did not

seek federal court jurisdiction for this case until it became necessary in 1992, five years later. Obviously she did not change her domicile to file this lawsuit. In fact she changed her domicile because that is what she would have done if her parents had not been alive and living in Dade County after she moved to WAshington, and because she wanted to be certain she would not die a resident of Dade County, Florida with any estate she might have subject to those courts.

The Supreme Court has jurisdiction for the many violations of constitutional and civil rights law, as well as property and due process deprivations in both the district and appeal court.

STATEMENT OF FACTS AND PROCEEDINGS BELOW

In the district court Petitioner/Plaintiff/Appellant filed many instruments proving that she had a permanent continuous residence and domicile in Washington, D. C.

One of the most important pieces of evidence is a letter from the Liberty Mutual INsurance Company offices in Fairfax, Virginia stating that they have insured Petitioner's residence in Washington, D. C. since 1976 and including insurance continuing at that date of the trial in federal court.

This evidence is conclusive proof that Petitioner has a physical residence in Washington, D. C. and that she had insurance with this company from 1976 continuously. The statement is from the service manager and on the company's stationery. Petitioner does not know the manager and merely requested the statement to be sent to her.

To any lawyer or judge it must be obvious that an insurance company would not jeopardize itself by making a perjured statement that they are receiving insurance premiums when they are

There are myriad ways that a lawyer could conjure in which a company could be held liable.

One has to have a home to pay Homeowner's insurance.(Ap)

Petitioner filed a letter from the Supervisor of Elections of Dade County that their records show Broida as a registered voter until 1986, the last time she voted, and she had been purged from records as not having voted for two years, and that would be 1988 which is one year after she declared domicile in 1987 and four years before filing this suit.

This is the first time Petitioner was not a registered voter in Dade County, Florida having voted since her first vote at age 21. This was a removal of the only vestige of legal domicile in Dade County, Florida. She had not lived in her parent's home since before her mother died in August 3, 1977 having rented a temporary apartment because of having to be there. The residence of decedent was turned over to the condemnor after settlement of the suit and was in their possession in August,1984 but she hadn't lived in it at all, only taking her time to protect the vacant property from vandalism and to care for the grounds and structure until the suit was settled. In eminent domain proceedings in Florida government can abandon the taking and walk away without paying any compensation, therefore the property had to be protected until final resolution. The five attorneys in this case don't know that.

In addition Petitioner and her brother could have just given the property to the condemnor or deeded it to anyone else prior to entry into the probate of the five lawyers. It was theirs to do so. Then none of the lawyers of other family defendants would have gotten anything from it. Samuel S. Smith as invalidly appointed personal reprssentative, put into the case invalidly by a probate judge who

must have thought there was a lot of money in the estate took over $100,000 of the money Petitioner created for the estate. Gene S. Rosen who was not entitled to any fees unless he had increased the value of the estate, and did not, but decreased the value, representing Stacie Merrett, Petitioner's mentally deficient thirty-eight year old daughter, conspired with the parties to the heirship settlement agreement for them to breach it, and claimed that represented a benefit to the estate receiving $25,000 for his calumny, and thereafter took more fees from Stacie and her son who already were guaranteed shares from whatever the estate would have because of her condition and need, and did not require the services of a lawyer who succeeded in creating excessive litigation for his own benefit.

Milton Kelner, who never met the child he was appointed to protect as guardian-ad-litem or the mother and only caused litigation so that he could earn a fee received $10,000 for satisfying the judge with producing litigation.

If the case had been concluded before they entered they would have had nothing, and if Petitioner had not given up her own life to protect the estate property there would have been a total of $100,000 from the condemnor.

Petitioner placed other evidence into the file of her domicile including the page of the pleading in 1987 in which she declared her change of domicile. In addition she filed copies of airline tickets for travle from Miami to D. C. and return, and from travel from D. C. tp Miami, and telephone bills showing calls from her phone in Washington to her parents' phone in Miami Beach; and filed Affidavits from two friends 1) Martha Neham Edelstein whom she has known since college and who visited her in WAshington and knew her intention to remain there, 2) Phyllis Shampanier, an attorney and former member of the Board of Governors of the Florida Bar with whom she kept a listing as a lawyer after she moved to WAshington and who represented several of Petiti-

ioner's former clients and relatives, and continuously urged Petitioner to return to Florida and join her in her practice in Coral Gables.

Petitioner introduced a letter to the Internal Revenue Service in Philadelphia where she filed her returns since she lived and worked for the government in D. C. and that is where the returns went, except that she had some real difficulty with that office and failure to recieve a refund from them, which she still has not received.

Petitioner filed evidence of having purchased a car in Miami and sending the registration to D. C. so that her Virginia insurance company which had been insuring her car which she bought in the District in 1969 would continue to insure it, only to have to pay a sales tax twice, equal to the one she paid in Miami. When she had to buy her next car and she was in Miami she registered it in Florida for two reasons, to avoid paying double sales tax, and to avoid the new Florida law requiring anyone bringing a car into Florida to pay a fee, at first it was $100, but it had been raised to $400. Her Virginia insurance compnay insured it.

Petitioner filed a copy of a letter to her mother asking for compensation to pay the costs of her having to come to Florida for the eminent domain case and the months she had to stay there while still paying all her expenses in Washington; and filed instruments showing her employment by government agencies of the Department of Labor , Office of Education, Model School Division. It was for these civil rights programs and their continuation that Petitioner had moved to Washington to be involved in them. She directed the first federal National Teacher Corps in 1966.(Ap)

Petitioner maintained her bank account with the Washington bank which she opened when she first came to WAshington and still has it.

The letter to the D. C. Department of

Transportation was included in the evidence filed in the lower court.

Petitioner's evidence of permanent residence in Washington, D. C. is uncontrovertible. The issues raised by Defendants as challenges were specious and of no effect and did not disprove Petitioner's claims.

Petitioner files several of these instruments in the Appendix. All of them are in the court record.

The lower courts are in conflict with the following Supreme Court decision on domicile.

> " Domicile is residence at a particular place accompanied with positive or presumptive proof of an intention to remain there for an unlimited time. Mitchell v. U. S. 88 US 352, 22 LED 584, 1875
>
> "Residence, in fact, and the intention of making the place of residence one's home are essential elements of domicile. The actual fact of residence and a real intention of remaining there as disclosed by his entire course of conduct are the controlling factors in ascertaining his domicile." Gilbert v. David 235 US 561, 35 SCT 165, 166, 59 LED 36, 1914, and the following federal decisions
>
> "A person is domiciled in a location where he or she has established a fixed habitation or abode in a particular place and intends to remain there permanently or indefinitely. The existence of domicile for purposes of diversity is determined as of the time the lawsuit is filed." Hill, 615 F2d at 889.
>
> It is important to understand the words above do not require that a person spend every day at the abode, but only that a

physical place or location which is designated as a residence is sufficient. The person does not have to stay there at all. Thousands of people move to the State of Florida in retirement still maintaining a previous abode in a former State which they maintain as their domicile. The physical applies to the location not to the person. To remain there indefinitely means to keep that residence at that location, and not that the person has to be in it at all times.

United States citizens may travel and live in other countries nevertheless maintaining a physical residence/domicile in the United States which they do not lose because of being away. Such is the situation with many actors who go on location for years,; entertainers who travel continuously; archeologists who are on location for yeear; and other scientists.

Petitioner did not have a permanent residence in Miami, Florida, and had never an intention of remaining there. Does that mean she had no domicile at all. and was a displaced person?

Another confusion in the minds of the Magistrate is the question he asked Petitioner as to whether she owned her residence in Washington, Would that mean that the millions of people in this country who have never owned a property have no domicile? People who rent a room in a hotel, or a rooming house, or someone else's home, or a maid who has a live-in job therefore have no domicile?

WHY THIS COURT SHOULD GRANT CERTIORARI

The decisions of the lower courts refusing to recognize Petitioner's domicile as being where she chooses to have it having a physical residence there for over 29 years is a deprivation of constitutional rights and a failure of due process and civil rights. The decision is made on preference rather than on law. These are issues which this Court should address and settle.

"Evidence of the residence of the plaintiff in a state other than that of the defendant is prima facie evidence of the existence of diversity of citizenship. Urschel v. Forgan, 297 F 210

"A motion to dismiss will be denied where the record indicates that the defhas not shown a complete absence of issues of fact concerning diversity of citizenship jurisdiction. Roman Mosaic Tile Co. v. Thiokol Chemical Corp. 297 F 210

CONCLUSION

For all the foregoing reasons the Petition for writ of certiorari of Edith Horowitz Broida should be granted.

Respectfully submitted,

Edith Broida

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Certificate of Service

It is hereby certified three copies of Petition for Writ of Certiorari and Appendix were mailed by U.S. Postal Service to Samuel S. Smith, 701 Brickell Ave, Miami, Fla., 33131, Gene S. Rosen, 1550 N. Miami Gardens Drive, N. Miami Beach, Fla. 33179, Alexander Martone, 30 S.E. 7th St., Boca Raton, Fla., 33432, Bernard Weksler, 2655 Le Jeune Road, Coral Gables, Fla, 33134, Andre Fournier, P.O. Box 6250, Surfside, Fla, 11/8/95